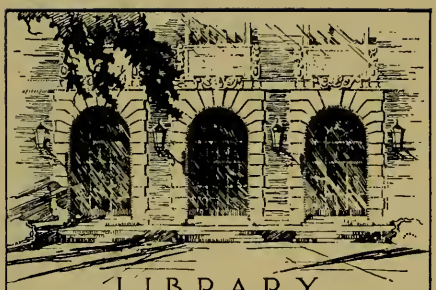

PRIVATE BILL LEGISLATION.

SPEECH OF MR. DODSON,

IN THE HOUSE OF COMMONS,

MARCH 15, 1872.

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The adjourned Debate on this subject will be resumed on FRIDAY, MARCH 22nd, *at the time of Private Business, viz.*, FOUR *o'Clock.*

Mr. DODSON rose to propose resolutions on this subject. The hon. gentleman said the defects of the system of private legislation were so well known, and the dissatisfaction which was felt with it was so wide spread, that he need not enlarge upon them. These evils and inconveniences were partly inherent in the subject matter Private business often necessitated a judicial investigation into intricate facts, and the Committees had sometimes to decide questions involving a nice adjustment of private interests and a balance of public advantages and disadvantages. Frequently the question was one of discretion, and not to be decided by any uniform law. All these evils and inconveniences, however, were aggravated by the fluctuating nature of our Committees. The members of them showed great industry, sometimes great ability, and always high honour ; and they rendered a service for which they received very inadequate credit from this House or the public. They were men, too, accustomed to watch and allow for public opinion. The number of members, however, having the leisure to devote themselves to the work, who from legal antecedents or special knowledge were peculiarly fitted for a judicial investigation, and for presiding, in fact, over a lawsuit, was limited. Members in

general had not the habits and training which fitted them to control an active and energetic Bar, and to decide what evidence should be excluded or admitted. The result was that there was a Bench much weaker than the Bar before it. Moreover, all these inquiries were crowded into a few weeks ; the comparatively few qualified members were wanted in half a-dozen or a dozen committee-rooms at once ; members were pressed into the service regardless of their qualifications, and the Committees sat all at once, with no knowledge of each other's proceedings, and consequently with conflicting decisions. Members, too, had public duties in this House, and, their physical powers being limited, Committees could only sit for a few hours in the day. Hence, there were frequent adjournments, and long detention of witnesses and legal practitioners,—every element, indeed, insuring a lengthy, costly, uncertain, and unsatisfying inquiry. All this ordeal might have to be undergone a second time in the other House, for there was no appeal in a judicial sense on special grounds, such as an allegation that the first tribunal had fallen into some error, or that new facts had come to light, but an opponent with enough money in his pocket could insist as a matter of right on taking his chance with a second jury. Nor was it an appeal from an inferior to a superior tribunal, for the Committees of the two Houses were of co-ordinate authority, and it was a matter of chance or official arrangement whether a Bill first came before this or the other House. If both juries were to hear the same counsel and the same witnesses, why, it had been asked, should they not sit on the same day and in the same room ? This was the recommendation of the Joint Committee of both Houses in 1869. The members of the Commons all concurred in recommending its adoption as conducing to greater simplicity, rapidity, and economy ; while of the members of the Lords, only one, Lord Redesdale, opposed it. The members of the Commons were Sir George Grey, Mr. Disraeli, Mr. Bouverie, Mr. Walpole, Colonel Wilson

Patten, and the Chairman of Ways and Means ; the members of the Lords were Lord Granville, Lord Halifax, Lord Eversley, Lord Salisbury, Lord Redesdale, and the late Lord Derby. It had been objected that this would allow no opportunity of appeal, but that Committee contemplated some provision of this kind ; on this subject, however, he would comment presently. It had also been objected that the plan would not lighten the labours of Members. This, however, was not the first consideration, but that which was best for the public interest. If the joint Committees, as had been suggested, were composed of three Members of each House, the labours of the Commons would be slightly diminished, and if of two Members of each House they would be materially diminished. The question arose—Could not the reform be carried further ? The House had, with great advantage to the parties concerned and great credit to itself, remitted to the judges of the land the trial of divorces, election petitions, and various questions relating to settled estates formerly decided by Parliamentary Committees, and in many other matters it had confided to an external body original jurisdiction, the decision being subject to confirmation by Parliament. For the conduct of a judicial investigation a permanent tribunal of experienced men was better qualified than a jury of gentlemen inexperienced in such business, such as composed the ordinary Private Bill Committees. It was, of course, objected that though the investigation might be judicial, the result was legislative, the Committee's functions being, not to ascertain or declare, but to make the law. In the majority of cases, however, and in an increasing number, their functions were not so much those of legislators as of arbitrators. Public feeling with regard to public works and joint-stock companies had greatly changed within the last quarter of a century. At one time Railways coming into a district were regarded as enemies to be resisted, and Parliament had to decide whether private interests should be over-

ridden for the sake of the public advantage ; whereas, now, in 9 cases out of 10, he might almost say in 99 cases out of 100, they were looked upon as allies to be negociated with, landowners and other opponents being generally anxious that they should be made, but on more favourable terms. So, too, with gas and water works. Of 170 Railway Bills introduced this Session, 150 probably were for the construction of "spurs," or branch lines, six or eight miles long, and for the settlement of the terms on which they should be worked by the main-line Company. These were obviously matters of arbitration. There were, of course, cases involving serious questions of policy, and whether the public benefit justified an exception to the general law. In view of these, such as the amalgamation Bills of this Session, Parliament could not and ought not to part with its jurisdiction. His suggestion was that it should simply part with provisional jurisdiction, reserving, as in many other cases, the ultimate control. Assuming that this was a rational basis, what external tribunal would command such general confidence that appeals from it would be the exception, not the rule? Provisional Orders were at present made by Government departments, and were confined to matters in which the capital at stake was small, the parties generally consented, or the opinion of the locality affected could be ascertained; but if extended to matters where great interests were at stake, and where feeling ran high, people would not be satisfied with an Order made upon the decision of an official sitting in a Government office, and on grounds or evidence which nobody knew, nor with an Order made on the decision of a Government inspector, sent down to hold a public meeting, or make some general inquiry, and liable to hear only *ex parte* statements. Provisional Orders, to be generally acquiesced in, must be made by a tribunal possessing public confidence, after a public hearing, where all concerned had an opportunity of appearing by witnesses and counsel. An hon. and learned

Member had introduced a Bill for one part of the United Kingdom remitting the investigation to the Judges of the land, but he doubted whether they would be disposed to undertake the work, and their habits and training would lead them to adhere to precedents, whereas this tribunal ought to allow amply for the variations of public opinion. It should be composed of men, not inferior in weight and calibre to the Judges, appointed for this special purpose. We looked for Judges among the most eminent practitioners at the Bar, and in the same quarter might be found men qualified for this duty. He saw no danger of men thus specially appointed adhering too strictly to precedents, and obstructing public improvements, and the necessity of consulting public feeling would be kept alive in them by the power of appeal to Parliament. This tribunal ought to sit in London, Edinburgh, and Dublin, and it might, perhaps, go on circuit, and sit in other places; for in important local cases, say at Glasgow or Liverpool, it might be cheaper and more convenient for the tribunal to go thither than for the parties to go to the tribunal. In matters of minor importance, such as the settlement of disputes between Companies, the internal or financial arrangements of a Company, or the extension of time for the completion of works, one Judge or Commissioner might make the Order. Where taking the property of unwilling persons to a great extent was at issue, the invasion of a town by a railway necessitating much demolition of dwellings, or amalgamations of public importance, two or more Judges might decide. There was a third class of exceptional cases, involving a new principle or matters of magnitude, such as to constitute a great question of public policy, in which it would be apparent that neither the parties nor the public would rest satisfied without a decision of the Legislature. He thought it worthy of consideration whether, with a view to such cases, a discretion should not be given to the Court to remit them at once to Parliament. All the Provisional Orders that came before the

tribunal, whether they were granted or refused, should be laid before Parliament, lest it should be possible that this tribunal, whether through error or some unfortunate bias of some of its members, should have it in his power altogether to suppress some new invention, or to prevent a scheme of a novel character being submitted to the Legislature. The tribunal would, of course, decide on all questions as to compliance with the Standing Orders and on those which were now decided by the Referees as to the rights of *locus standi* of parties. Then came the question how many Judges would be required to transact this business. According to the best calculation he had been able to make, three Judges sitting for nine months in the year would be sufficient to discharge all the work now discharged by the Committees of the two Houses, by the Referees, and by the Examiners on Private Bills. What he proposed was that there should be one set of Commissioners whose commission would run over the whole of the United Kingdom, and who should visit different parts as required. There was not business enough in Scotland or in Ireland to justify the creation of a separate tribunal, and moreover the establishment of one Commission for the United Kingdom would tend to secure harmony and consistency of proceeding. He thought the men who composed this tribunal should be not a whit inferior in calibre or in authority to the Judges of the land, and, therefore, that provision should be made for their salaries on a proper scale. The parties to Private Bills now paid in fees a sum varying from a minimum of £45,000 or £50,000 to a maximum of between £130,000 and £140,000 a year. That fund was mainly, if not entirely, under the control of the Chancellor of the Exchequer. Here, then, was a fund amply sufficient to provide for the expenses of an efficient tribunal, and he thought the parties who were called upon to pay such heavy fees were at least entitled to claim from the Chancellor of the Exchequer and the country that in return for those heavy fees they should be provided

with the most efficient tribunal the country could furnish. As a general rule, it would be admitted, that the nearer home a trial took place the less expensive it would be to the litigants. In exceptional cases, where many eminent counsel would be engaged, and many eminent scientific witnesses would be called, of course the expenses of a trial would in those particular respects be greater if it were held in the provinces than if it were held in London. We must, however, legislate for general, not for exceptional, cases. Still, to meet exceptional cases, he proposed that the parties should have the option of claiming that their cases should be tried in the metropolis instead of any other place. He had approved of the adoption of Joint Committees for the trial of Private Bills as in itself an improvement. If we were to establish an external tribunal of first instance, he thought there could be no question that a consolidated Committee of the two Houses would be the best tribunal for dealing with such appeal. How many cases of appeal there might be in a year it was of course impossible to determine. Some idea might be derived from the number of Private Bills that were now contested in both Houses. At present the number was, perhaps, from 40 to 50 or 60, and if the number of appeals were similar, that would furnish work for eight or ten Joint Committees. At this rate about twenty members of each House, selected for their especial qualifications, would suffice to discharge all the duties of this kind. He hoped, however, the number of appeals would prove less than of doubly contested cases. The House was now disposed to place great confidence in its Private Bill Committees and in its Referees. It seldom recommitted a Bill or reversed their decision, and he thought the decision of such a tribunal as he contemplated would carry still greater weight and command still greater respect. Then came the question whether the appeal to Parliament should be a matter of right or be subject to certain conditions. Considering the liability of a frivolous appellant to costs, he thought there would be

no undue number of such appeals without a definite cause ; but he was aware there was a very strong feeling against leaving it simply to the discretion of one party whether, without any cause shown, the expenses of a second trial should be incurred. He, therefore, suggested that if notice of an appeal against the decision of the tribunal were given, the tribunal should furnish a short summary of the reasons for which that decision was given. It would, in this respect, do what the Board of Trade was now required to do in certain cases, as in granting a warrant for the abandonment of a Railway. The appellant would then present a petition to Parliament setting forth his reasons, and asking for liberty to appeal. The statement of the tribunal, with the petition of the appellant, would go as a matter of course before the Standing Orders Committee, who would report to the House whether in their opinion a *primâ facie* case for an appeal was made out. It had always appeared to him that the passing of Provisional Orders was very cumbrous and inconvenient, and he suggested that each Provisional Order, whether made by a department or by the tribunal, should be laid before Parliament, and if within a certain number of days it were not objected to then it should become law. He did not propose to interfere with the duties or jurisdiction of the Inclosure Commissioners. He thought it expedient that, for the present at all events, Government departments should retain the power they now possessed of making Provisional Orders in minor matters. With regard to Ireland, the Lord Lieutenant in Council or the Chief Secretary was the department which granted Provisional Orders for Irish Tramways or for the local government of the towns. It would, in his opinion, be convenient to persons interested in Irish undertakings if the powers of the Board of Trade for granting Provisional Orders with regard to Railways, Gas and Water works were also carried over St. George's Channel, and intrusted either to the Lord Lieutenant or to the Chief Secretary. He could not make a similar suggestion

for the benefit of Scotland, because there was in that country, so far as he was aware, no Government department to which the power of granting Provisional Orders could be transferred. For the present, therefore, Scotland would have to rest satisfied with the opportunity of applying for Provisional Orders either to the Government department, as at present, or to the new tribunal sitting in Edinburgh or elsewhere. There were other Private Bills which might be called Private Bills proper, such as estate, divorce, and naturalization Bills; they were few in number, perhaps only from ten to twenty in the course of a Session, and were very seldom opposed. With these Private Bills proper he did not propose under this scheme to interfere. If they were to be dealt with, it might be done by extending the powers of the Judges in reference to settled estates, of the Divorce Court, and so on. If this scheme were adopted, every undertaking would be carried on by means of Provisional Orders, to be obtained in minor cases on application to a Government department; in great cases, and also in minor cases if the Promoters chose, on application to a strong external tribunal, constituted of men of the same calibre as the Judges of the land, before whom the Promoters and the witnesses would be heard in open court. Following upon that, if the case required it, would be an appeal to the strongest Parliamentary tribunal which could be furnished — namely, a tribunal drawn from a limited number of men selected by the two Houses for their special qualifications for the work. He ventured to hope that under such a system the public would be more cheaply, more efficiently, and more satisfactorily served than it was at present; and, further, there would be this secondary advantage, that Parliament would relieve itself from a great amount of work, much of which was too minute to be worthy to occupy the time and attention of Members of the Legislature, and much of which, with all due respect for the Members of the two Houses, they were but ill-qualified to perform. This relief to the

labours of this House was a matter of great and growing importance. The public business of the House of Commons was growing, and was likely to continue to grow. There was, moreover, a growing disposition to appoint Select Committees to consider public Bills and public subjects, and that also took up the time of Members. An idea had been mooted that, with a view to the despatch of business, a system of Grand Committees should be adopted, to which important public business should be referred. If such a scheme was to be carried into effect, it would become doubly and trebly important to release from their labours some 180 to 250 Members who were now engaged in considering Private Bills. He had trespassed so long on the time of the House that he would not attempt to anticipate the objections which might be raised to the scheme he had suggested. He was perfectly aware that a great number of objections might be urged, but every scheme that might be proposed would be open to some objections, and the question was whether the objections which applied to the existing state of things were not greater. In what he had said he could lay no claim to originality. Almost every idea which he had thrown out had been suggested by others, such as Lord Grey, Lord Salisbury, the Chancellor of the Exchequer, Sir T. Erskine May, Mr. Rickards the Speaker's Counsel, and other gentlemen of great experience and well qualified to give an opinion. He laid no claim, as he had said, to originality in the suggestions he had put before the House, with one single exception. But, though these schemes had at different times been submitted to Select Committees, and had met with a large share of approval, the transfer of any portion of the jurisdiction of Parliament to an external tribunal had not been discussed in this House for a great number of years. Every year that passed over our heads brought further testimony to the unsatisfactory character of our private legislation, to the possibility of remitting more and more of these matters, in the first instance at all events, to an external tribunal, and to the

desirability of relieving Parliament from unnecessary labour. He had not the presumption to suppose that he could submit to the House a scheme which it would be fair to accept on his own recommendation. This matter, if dealt with, must receive the grave consideration of many minds. But he would ask the House not to fall into the error of appointing another Select Committee to consider this question. Of Select Committees we had had an infinity, and any gentleman who was curious on the subject might find the shelves of the library groaning under their reports of Private Bill legislation, and very little had come of it. If another Select Committee were appointed it would take the evidence of a limited number of the officials of this House ; but these had been examined over and over again, and of gentlemen of great learning, ability, and high honour who were well versed in the practice of Private Bill legislation. Well, all men very naturally had an affection for the labyrinth of which they held the clue, and from them it could not be expected that much evidence against the present system would be received. But if this matter was to be dealt with effectively, it must be submitted to the consideration of several independent minds. He would suggest to the House that they should appoint a Committee, not to take evidence, but a Committee which, if it had the will, would also have the power to give effect to its will. He proposed that the House should call upon the Government to act as a Committee, and to take up this subject. The hon. gentlemen concluded by moving the following Resolutions :—

1. That, in the opinion of this House, the system of private legislation calls for the attention of Her Majesty's Government, and requires reform.

2. That it is expedient to substitute, as far as possible, an extended and improved system of Provisional Orders for Local and Personal Bills.

3. That Provisional Orders should be obtainable in Eng-

land, Scotland, and Ireland on application to a permanent tribunal of a judicial character, before which Promoters and Opponents should be heard in open Court, and the decisions of which should be subject to confirmation by Parliament.

4. That, in case of either House of Parliament admitting an appeal against a decision of the tribunal in the matter of any Provisional Order, such Provisional Order should be referred to a Parliamentary tribunal, composed, in the manner recommended in 1869 by the Joint Committee of the House of Lords and the House of Commons on the despatch of business in Parliament, of Members of both Houses.

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